

Hon. Harold Heinze
Commissioner
Department of Natural Resources

December 24, 1991

663-92-0294

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Transfer of Alaska Oil
and Gas Conservation
Commission to DNR through
administrative order

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In a letter to you dated December 13, copied to General Cole, Representative Kay Brown asked you to consider the recent transfer, for administrative purposes, of the Alaska Oil and Gas Conservation Commission (AOGCC) from the Department of Commerce and Economic Development to the Department of Natural Resources.

Representative Brown enclosed a copy of an opinion from Tamara B. Cook, the director of the Division of Legal Services, Legislative Affairs Agency, stating that an executive order was probably necessary to accomplish this transfer. In order to assist you in responding to this letter, we have reviewed Ms. Cook's opinion. We do not agree with her conclusion.

Ms. Cook has overlooked a relevant statute, AS 44.17.060, in her opinion. This statute provides:

Administrative functions established by law that are not assigned by law to any department shall be assigned by the governor to that department which, in accordance with the organization of state government, can most appropriately and effectively perform the activity.

It clearly gives the governor authority to take the action that he took without the need for further legislative authorization.

Moreover, even if this statute did not exist, we would not agree with Ms. Cook's conclusion. As she notes, article III, section 23 of the Alaska Constitution authorizes the governor to "make changes in the organization of the executive branch . . . which he considers necessary for efficient administration," subject to the requirement that when "changes require the force of law, they shall be set forth in executive orders," which the legislature may disapprove. The question, then, is whether the transfer of the AOGCC required the force of law.

Ms. Cook concluded that the transfer did so require, based on the language of article III, section 22 that requires executive and administrative offices, departments, and agencies of the state to be allocated by law to the principal departments,

and that authorizes the establishment by law of regulatory, quasi-judicial, and temporary agencies not allocated to a principal department. We do not believe that this language requires an executive order when an independent agency is being attached to a principal department for administrative purposes only. 1/ The legislature has already, in AS 31.05.005(a), met the requirements of section 22 by declaring the AOGCC to be an independent quasi-judicial agency. Nothing in Administrative Order #124 alters the AOGCC's standing.

We reach this conclusion because of the language in section 22 that states that not only agencies, but also "their respective functions, powers, and duties", shall be allocated by law among and within the principal departments. We read this language as making the "force of law" language in section 23 inapplicable to transfers of independent agencies from one department to another, for purely administrative purposes. If the governor were proposing to give the commissioner of natural resources substantive policy control over the AOGCC, an executive order would be required. But this is not the case here.

There is precedent for this transfer. The Commercial Fisheries Entry Commission (CFEC), like the AOGCC, is an independent regulatory agency not assigned by statute to any department. The CFEC was apparently initially allocated to the Office of the Governor for administrative purposes. Administrative Order #60 (July 1, 1980) reassigned it to the Department of Fish and Game for those purposes. The order explained that the transfer was for reasons of budgeting and administration only, and that ADF&G "has no authority to regulate the policies or activities of the Commission, except those that are purely administrative in nature." While Administrative Order #124 (July 1, 1991), transferring the AOGCC to DNR, is not as explicit, its statement that the transfer is "for administrative purposes" carries the same limitation.

1/ An executive order would be required if an agency were assigned by statute to a certain department for administrative purposes, and the governor proposed assigning the agency to another department. See 1986 Inf. Op. Att'y Gen. (Sept. 12; 663-87-0094) (executive order is required if proposed change in governmental organization would require change to a statute). But since no statute assigns the AOGCC to a department for administrative purposes, or prohibits the governor from making such an assignment, this issue does not arise.

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Further precedent exists with regard to the AOGCC itself. Since the statute does not provide for its placement with a department, but (according to Administrative Order #124) it is currently allocated to DCED for administrative purposes, that allocation must have been done by the governor. Indeed, it appears that the initial allocation was not even done through an administrative order, since no order assigning the AOGCC to DCED exists.

If we may be of further assistance on this matter, please let us know.

JBG:lmk